

## **Specifications**

### **Purchase of Stream Compensatory Mitigation Credits**

#### **A. Scope.**

The purpose of this document is to establish one or more ten (10) year Agency Term Contracts to provide Stream and Wetland Compensatory Mitigation Credits to the Tennessee Department of Transportation. Multiple contracts may be awarded.

#### **1. Definitions shall be as follows or as designated and defined in the terms and conditions of the Contract:**

- a. HUC 8: a hydrologic unit code (HUC) is assigned to a geographic region associated with specific bodies of water. The United States is divided and sub-divided into successively smaller hydrologic units which are classified into different levels: Regions (HUC 2), Subregions (HUC 4), Basins (HUC 6), Subbasins (HUC 8), Watersheds (HUC 10), and Subwatersheds (HUC 12). The HUC 8 refers to the geographic area that contains a specific Subbasin.
- b. Inter-agency Review Team (IRT): a committee of state and federal agency members that review, evaluate, negotiate, and approve Mitigation Banking Instruments.
- c. Mitigation Bank ("Bank"): a wetland, stream, or other aquatic resource area that has been restored, established, enhanced, or preserved for the purpose of providing Stream and Wetland Mitigation Credits for impacts to aquatic resources permitted under Section 404 and 401 of the Clean Water Act. A Mitigation Bank may be created when a government agency, corporation, nonprofit organization, or other entity undertakes these activities under a formal agreement with the United States Army Corps of Engineers and other applicable environmental regulatory agencies.
- d. Mitigation Banking Instrument (MBI): the agreement between the Mitigation Bank owners and the regulators that establishes the terms of the Mitigation Bank approval, monitoring requirements, and legal obligations.
- e. Primary Service Area: the geographic area (e.g., watershed, county) wherein a Mitigation Bank is authorized to provide compensation for impacts to aquatic resources. The Primary Service Area is designated in the MBI; in Tennessee, the Primary Service Area is typically the HUC 8 watershed where the Mitigation Bank is located.
- f. Released Credits: Stream and Wetland Mitigation Credits that have received regulatory approval from the United States Army Corps of Engineers (USACE) and the Tennessee Department of Environment and Conservation (TDEC) to be sold by Mitigation Banks to third parties. Credits are not authorized to be transferred to third parties until the credits are Released.

g. Secondary Service Area: the geographic area (e.g., watershed, county) wherein a Mitigation Bank is authorized to provide compensation for impacts to aquatic resources but is outside the Primary Service Area. The Secondary Service Area is designated in the MBI; in Tennessee, the Secondary Service Area is often a HUC 8 watershed, or group of HUC 8 watersheds, adjoining the Primary Service Area.

h. Stream Mitigation Credits: A "Credit" is a unit of currency associated with tracking measurable impacts to streams and wetlands. USACE and TDEC, through rulemaking, policy, and guidance, determine how the units of credit are measured and calculated. Credits are generated by Mitigation Banks. TDOT is required to purchase Stream and Wetland Mitigation Credits as a condition to receive environmental permits issued by the USACE and TDEC.

2. The Contractor shall establish a Mitigation Bank to sell Stream Mitigation Credits. The Contractor shall sell Credits produced by the Bank to the State to be used to offset current and future transportation projects. TDOT will use Credits purchased from the Mitigation Bank to obtain environmental permits necessary for the construction of transportation projects.
3. The Contractor will be expected to own, operate, and manage all aspects of the Mitigation Bank, and sell credits to the State once they have been Released by the United States Army Corps of Engineers (USACE) and the Tennessee Department of Environment and Conservation (TDEC).

Long term credits:

- 4.1. The Contractor's Mitigation Bank shall have a Mitigation Banking Instrument (MBI) for the proposed mitigation site approved by the Inter-agency Review Team (IRT). Such approval must be signed and dated by the IRT member agencies on or before December 31, 2024, and a copy evidencing such approval shall be submitted to the State. Reference Table 1.
- 4.2. The State is soliciting credits to be Released at a future date with an MBI approval date no later than December 31, 2024. All MBIs must be approved by the IRT by December 31, 2024, unless both Parties agree to extend this date pursuant to Paragraph 7. Reference Table 1.
- 4.3. The State shall not be bound by the Contract unless and until a MBI for the proposed mitigation site has been approved by the IRT, and if the State has determined that the credits meet the State's mitigation needs. Absolutely no funds shall be requested by or paid to Contractor prior to the State's receipt of a signed credit release. Proof of credit release must be signed and dated by the IRT, a copy of which shall be submitted to the State. If at the close of business on December 31, 2024, the MBI has not been approved by the IRT, then the State may exercise the right to terminate the contract. The MBI approval deadline may be extended on agreement of both parties through a properly executed amendment. Reference Table 1.
- 4.4. The Contractor shall have the right to terminate the Contract if the Contractor determines that it will not proceed with the establishment of the Mitigation Bank; such termination shall occur

automatically on December 31, 2024, unless Contractor provides notice to the State on or before December 31, 2024, that it will proceed with the establishment of the Mitigation bank. Following any such termination by the Contractor, neither Party shall have any further obligation or liability to the other Party under the Contract. Reference Table 1.

Short term credits:

- 5.1 The Contractor's Mitigation Bank shall have a Mitigation Banking Instrument (MBI) for the proposed mitigation site approved by the Inter-agency Review Team (IRT). Such approval must be signed and dated by the IRT member agencies on or before June 30, 2022, and a copy evidencing such approval shall be submitted to the State. Reference Table 2.
- 5.2 The State is soliciting credits to be Released at a future date with an MBI approval date no later than June 30, 2022. All MBIs must be approved by the IRT by June 30, 2022, unless both Parties agree to extend this date pursuant to Paragraph 7. Reference Table 2.
- 5.3 The State shall not be bound by the Contract unless and until a MBI for the proposed mitigation site has been approved by the IRT, and if the State has determined that the credits meet the State's mitigation needs. Absolutely no funds shall be requested by or paid to Contractor prior to the State's receipt of a signed credit release. Proof of credit release must be signed and dated by the IRT, a copy of which shall be submitted to the State. If at the close of business on June 30, 2022, the MBI has not been approved by the IRT, then the State may exercise the right to terminate the contract. The MBI approval deadline may be extended on agreement of both parties through a properly executed amendment. Reference Table 2.
- 5.4 The Contractor shall have the right to terminate the Contract if the Contractor determines that it will not proceed with the establishment of the Mitigation Bank; such termination shall occur automatically on June 30, 2022, unless Contractor provides notice to the State on or before June 30, 2022, that it will proceed with the establishment of the Mitigation bank. Following any such termination by the Contractor, neither Party shall have any further obligation or liability to the other Party under the Contract. Reference Table 2.
- 6 The State's intent is to purchase mitigation credits from the lowest bidder or lowest combination of bidders to best meet the State's mitigation needs. The State will only pay for the number of Released Credits that meet the State's mitigation needs. The determination of the State's mitigation needs shall be in the sole opinion of the State. The State reserves the right to make no award, or to make single or multiple awards, as is determined to be most advantageous to the State. In the event that the lowest bidder does not have sufficient credits to satisfy the advertised quantity or does not fully satisfy the State's mitigation needs, then the State may purchase the remainder of needed credits from higher bidders to fulfill the State's mitigation needs. In this event, the State will first look at the next lowest responsive bidder and then proceed in order of price proposals to determine the best value for the state.

- 7 If the State determines that any Released Credits do not meet the State's mitigation needs, then, subject to the State's first right of refusal, the Contractor may sell such identified Released Credits to third parties.
- 8 The Contractor must secure any and all interests in real property required to perform its obligations under this Contract. If the Contractor desires to acquire any interest in any State-owned real property in order to perform its obligations under the Contract, the disposal by the State of such interests in real property to the Contractor shall require approval of the State Building Commission in accordance with applicable laws, rules, and policies. Likewise, if the Contractor desires to acquire any interest in any State highway right-of-way property in order to perform its obligations under this Contract, the disposal by the State of such real property and/or property rights to the Contractor shall require approval of the Commissioner of Transportation, the Federal Highway Administration, and/or the State Building Commission in accordance with applicable laws, rules, and policies. Any work performed by the Contractor on real property so acquired may also require separate approval of the State Building Commission in accordance with applicable laws, rules, and policies.
9. The Contractor's Mitigation Bank must be located in one of the HUC 8 watersheds listed in Table 1. Contractors whose banks have not yet been approved must utilize the Required Secondary Service Areas listed in Table 1. Contractors with pending or approved banks with any of the Primary Service Areas identified in Table 1 are welcome to submit bids regardless of Secondary Service Areas. Banks will be considered pending if they have submitted a draft MBI to the Tennessee IRT. The number of credits being targeted in each HUC 8 is not intended to limit proposals; the State may choose to purchase more or fewer credits than what is listed in Table 1.

Table 1.

Region	Primary Service Area	Credit Target	Required Secondary Service Area
1	06010104 (Holston)	6000	06010108 (Nolichucky) and 06010102 (South Fork Holston)
1	06010108 (Nolichucky)	4000	06010104 (Holston) and 06010107 (Lower French Broad)
1	06010201 (Watts Bar)	6000	06010204 (Little Tennessee)
1	06010207 (Lower Clinch)	4000	06010205 (Upper Clinch)
1	06010208 (Emory)	4000	N/A
3	06040003 (Lower Duck)	5000	N/A

4	08010210 (Wolf River)	5000	08010211 (Nonconnah Creek)
4	08010202 (North Fork Obion)	7000	08010205 (South Fork Forked Deer) and 08010204 (North Fork Forked Deer)

**Table 2**

Region	Primary Service Area	Credit Target
2	06020001 (Chickamauga) or 06020002 (Hiwassee)	6000
3	05110002 (Barren) or 05130201 (Old Hickory Lake)	4000
3	05130203 (Stones) or 05130204 (Harpeth)	6000